

**Final Statement of Reasons for  
Adoption of Proposed Amendments to  
California Code of Regulations,  
Title 18, Sections:**

**1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*; and  
1598, *Motor Vehicle and Aircraft Fuels***

**Update of Information in the Initial Statement of Reasons**

Current Law Prior to March 24, 2011

As explained in the Initial Statement of Reasons, Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) was enacted on March 22, 2010, and added sections 6051.8 and 6201.8 to the Revenue and Taxation Code (RTC) to impose an additional 1.75 percent sales and use tax on diesel fuel and amended RTC section 60050 to lower the diesel fuel excise tax rate to 13.6 cents (\$0.136) per gallon, beginning July 1, 2011. The additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6 that was enacted on March 23, 2010. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent sales and use tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law (RTC § 60001 et seq.) and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law; and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2 of the Diesel Fuel Tax Law.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent sales and use tax on the sale and purchase of tangible personal property effective April 1, 2009, would cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes

imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 would apply to the additional 1.75 percent sales and use tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011.

#### Original Proposed Amendments

As explained in the Initial Statement of Reasons, the original proposed amendments to California Code of Regulations, title 18, section (Regulation) 1598, *Motor Vehicle and Aircraft Fuels*, reflected the additional 1.75 percent sales and use tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, and the expiration of the additional one percent sales and use tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporated the two exemptions from the additional 1.75 percent sales and use tax on diesel fuel provided by RTC section 6357.3; and prescribed the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The original proposed amendments to Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, clarified that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011.

During its February 23, 2011, meeting, the Board determined that it was reasonably necessary to amend Regulation 1533.2 for the specific purposes of ensuring that the regulation reflects that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011. The Board also determined that it was reasonably necessary to amend Regulation 1598 for the specific purposes of ensuring that the regulation reflects the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that would be effective July 1, 2011, and prescribes the content of the exemption certificate required by RTC section 6357.3. As a result, the Board authorized Board staff to begin the formal rulemaking process for the Board to adopt the proposed amendments to both regulations.

#### Proposition 26

Also, as explained in the Initial Statement of Reasons, the California voters passed Proposition 26 on November 2, 2010. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010,

twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, could have been affected by Proposition 26; however, the Legislature had until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 was uncertain when the Board authorized staff to begin the formal rulemaking process and the Board proposed to adopt the original amendments to Regulations 1533.2 and 1598 to reflect the provisions of the Sales and Use Tax Law, as the law read on February 23, 2011.

#### Assembly Bill No. 105

On March 24, 2011, the day before the publication of the Board's Notice of Proposed Regulatory Action, the Legislature re-enacted RTC sections 6051.8 and 6201.8, as part of AB 105 (Stats. 2011, ch. 6), in order to comply with the requirements of Proposition 26. However, when the Legislature re-enacted RTC sections 6051.8 and 6201.8, the Legislature also amended the statutes so that the rate of the additional state sales and use tax on the sale and use of diesel fuel will change as follows:

- 1.87 percent for the period July 1, 2011, through June 30, 2012;
- 2.17 percent for the period July 1, 2012, through June 30, 2013;
- 1.94 percent for the period July 1, 2013, through June 30, 2014; and
- 1.75 percent on or after July 1, 2014.

In addition, the Legislature also re-enacted RTC section 60050 as part of AB 105 and revised subdivision (b) so that the rate of the diesel fuel excise tax was reduced to 13 cents (\$0.13) per gallon, effective July 1, 2011.

#### Chief Counsel Memorandum

Board staff prepared a Chief Counsel Memorandum dated May 5, 2011, which analyzed the changes to the RTC made by AB 105. The Chief Counsel Memorandum was distributed to the Board Members for consideration at the May 25, 2011, public hearing, posted on the Board's website, and made available to the public.

The Chief Counsel Memorandum explained the changes AB 105 made to RTC sections 6051.8 and 6201.8 and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 so that: (A) the text of Regulation 1598 reflects that the rate of the additional sales and use tax imposed on the sale and use of diesel fuel by RTC sections 6051.8 and 6201.8 will change; and (B) the text of Regulation 1533.2 reflects the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies, as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes.

The Chief Counsel Memorandum explained the change that AB 105 made to the rate of the diesel fuel excise tax imposed by RTC section 60050, effective July 1, 2011, and

recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 so that the second example in Regulation 1598 reflects the change to the rate of the diesel fuel excise tax imposed by RTC section 60050 made by AB 105.

The Chief Counsel Memorandum also recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 to clarify that the additional use tax imposed by RTC section 6201.8 applies to the “storage, use, or other consumption” of diesel fuel and to better conform the text of the exemption certificate to be used in conjunction with the exemption provided by RTC section 6357.3 to the express language of RTC section 6357.3, subdivision (c) providing that:

If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

Finally, the Chief Counsel Memorandum recommended that the Board authorize staff to make other nonsubstantial and solely grammatical changes to the original text of the proposed amendments to Regulation 1598 in order to incorporate the sufficiently related changes, delete unnecessary language, and correct the spelling of the word “calendar” in current subdivision (j), which the Board is proposing to renumber as subdivision (k).

#### May 25, 2011, Public Hearing

During the public hearing on May 25, 2011, the Board determined that the changes recommended in the Chief Counsel Memorandum were reasonably necessary for the specific purposes of: (A) ensuring that the text of Regulation 1533.2 reflects the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies, as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes; (B) ensuring that the text of Regulation 1598 reflects that the rate of the additional sales and use tax imposed on the sale and use of diesel fuel by RTC sections 6051.8 and 6201.8 will change; (C) ensuring that the second example in Regulation 1598 reflects the change to the rate of the diesel fuel excise tax imposed by RTC section 60050 made by AB 105; (D) clarifying the provisions of Regulation 1598 so that they specify that the additional use tax imposed by RTC section 6201.8 applies to the “storage, use, or other consumption” of diesel fuel; (E) further conforming the text of the exemption certificate being added to Regulation 1598 for use in conjunction with the exemption provided by RTC section 6357.3 to the express language of RTC section 6357.3, subdivision (c); and (E) incorporating the foregoing changes into the original text of the proposed amendments to Regulation 1598, deleting unnecessary language from the proposed amendments to Regulation 1598, and correcting the

spelling of the word “calendar” in current subdivision (j), which the Board is proposing to renumber as subdivision (k). Therefore, the Board unanimously voted to authorize staff to make all of the changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 recommended in the Chief Counsel Memorandum. The Board also directed staff to make the full text of proposed amendments to Regulations 1533.2 and 1598, with the changes clearly indicated, available to the public for additional comment in accordance with Government Code section 11346.8, subdivision (c).

#### Nonsubstantial and Solely Grammatical Changes Omitted from the Original Text

In addition, the original text of the proposed amendments to Regulation 1598 renumbered current subdivisions (e) through (i) as subdivisions (f) through (j), respectively. During its February 23, 2011, meeting, the Board authorized staff to make additional nonsubstantial changes to Regulation 1598, subdivisions (b)(1) and (c)(2)(D) through (F), which are not being renumbered, and subdivisions (h)(1), (i), (i)(2), (j), and (j)(1), which are proposed to be renumbered as subdivisions (i)(1), (j), (j)(2), (k) and (k)(1), in order to update the subdivisions’ internal cross-references to subdivisions (h), (i), and (j) to refer to renumbered subdivisions (i), (j), and (k), respectively. During its February 23, 2011, meeting, the Board also authorized staff to make a solely grammatical change adding a comma after the word “diesel” in the first sentence of Regulation 1598, subdivision (i), which is proposed to be renumbered as subdivision (j). However, these nonsubstantial and solely grammatical changes were inadvertently omitted from the original text of the proposed amendments to Regulation 1598, and the Board also included these changes with the changes to the original text of the proposed amendments to Regulation 1598 authorized by the Board on May 25, 2011.

#### 15-Day Notice

Board staff prepared a 15-day Notice, dated June 8, 2011, and attached the revised text of the proposed amendments to Regulations 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes clearly indicated, to the notice. Then, Board staff made the notice and revised text available to the public in accordance with Government Code section 11346.8, subdivision (c), transmitted the documents to those interested parties specified in Government Code section 11346.4, subdivision (a), and posted the documents on the Board’s website at [www.boe.ca.gov](http://www.boe.ca.gov). The 15-day Notice contained an update of the Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the original proposed amendments to Regulations 1533.2 and 1598 published in the California Notice Register on March 25, 2011, and the update described the Chief Counsel Memorandum dated May 5, 2011, and all of the sufficiently related, nonsubstantial, and solely grammatical changes to the text of the original proposed amendments to Regulations 1533.2 and 1598. The 15-day Notice also advised the interested parties regarding the deadline to submit their comments regarding the changes to the text of the original proposed amendments to Regulations 1533.2 and 1598.

### July 26, 2011, Board Meeting

On July 26, 2011, the Board, pursuant to the authority granted to it pursuant to RTC section 7051, unanimously voted to adopt the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes. The Board determined that the amendments to Regulation 1533.2 were necessary to revise the text of the regulation to reflect the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies after the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 ceases to be operative on July 1, 2011, and as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes. The Board determined that the amendments to Regulation 1598 were necessary for the specific purpose of conforming the text of the regulation to the current provisions of RTC sections 6051.8, 6201.8, and 60050, prescribing the exemption certificate for use with the exemption from the additional sales and use taxes imposed by RTC sections 6051.8 and 6201.8 provided by RTC section 6357.3, and to make other nonsubstantial and solely grammatical changes to the regulation.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

### Documents Relied Upon

Formal Issue Paper 11-002, which contained staff's recommendation that the Board begin the formal rulemaking process to adopt the original proposed amendments to Regulations 1533.2 and 1598, was submitted to the Board for consideration at its February 23, 2011, Board meeting, posted on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov), and made available to the public. A Chief Counsel Memorandum dated May 5, 2011, which analyzed the changes to the RTC made by AB 105, was submitted to the Board for consideration at the May 25, 2011, public hearing, posted on the Board's website, and made available to the public.

The Board relied upon Formal Issue Paper 11-002, the exhibits to the issue paper, and comments made by Board staff and the Board Members during the February 23, 2011, discussion of the issue paper when it decided to propose the original amendments to Regulations 1533.2 and 1598. The Board relied upon the May 5, 2011, Chief Counsel Memorandum and the attachments to the Chief Counsel Memorandum when it decided to make sufficiently related changes to Regulations 1533.2 and 1598, and make nonsubstantial and solely grammatical changes to Regulation 1598. The Board also relied upon Formal Issue Paper 11-002, the exhibits to the issue paper, the May 5, 2011, Chief Counsel Memorandum, and the attachments to the Chief Counsel Memorandum when the Board decided to adopt the proposed amendments to Regulations 1533.2 and 1598 with the changes.

The Board did not rely upon any data or any technical, theoretical or empirical study, report, or similar document in proposing and adopting the amendments to Regulations 1533.2 and 1598 that was not identified in the Initial Statement of Reasons, or which was

otherwise not identified or made available for public review and comment at least 15 days prior to the adoption of the amendments.

### **No Mandate on Local Agencies or School Districts**

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 does not impose a mandate on local agencies or school districts.

### **Public Comments**

No interested parties submitted written comments to the Board or appeared at the May 25, 2011, public hearing to make oral comments regarding the original text of the proposed amendments to Regulation 1533.2 and 1598 or the changes recommended in the Chief Counsel Memorandum. Furthermore, no interested parties appeared on July 26, 2011, to comment on the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes, and no interested parties submitted written comments regarding the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes.

### **Alternatives**

On February 23, 2011, the Board considered whether to propose the original amendments to Regulations 1533.2 and 1598 or, alternatively, whether to take no action at that time due to the uncertainty created by Proposition 26. However, the Board decided to propose the original amendments to Regulations 1533.2 and 1598 because they were consistent with current law and it is important for the regulations to accurately reflect the current provisions of the RTC.

On May 25, 2011, the Board considered sufficiently related changes to the original proposed amendments to Regulations 1533.2 and 1598 to incorporate changes made to RTC sections 6051.8, 6201.8, and 60050 made by AB 105. The Board also considered nonsubstantial and solely grammatical changes to Regulation 1598. The Board determined that the changes were necessary to ensure that Regulations 1533.2 and 1598 reflect the current provisions of the RTC and that Regulation 1598 is grammatically correct and does not contain any spelling errors.

By its motion on February 23, 2011, proposing the adoption of the original amendments to Regulations 1533.2 and 1598, its motion on May 25, 2011, which authorized sufficiently related changes to Regulations 1533.2 and 1598 and also nonsubstantial and solely grammatical changes to Regulation 1598, and its motion on July 26, 2011, adopting the proposed amendments to Regulations 1533.2 and 1598 with the changes authorized on May 25, 2011, the Board determined that no alternative to the adopted text of the proposed amendments to Regulations 1533.2 and 1598 would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective

and less burdensome to affected private persons than the adopted regulation or would lessen the adverse economic impact on small businesses.

### **No Significant Adverse Economic Impact on Business**

Furthermore, the adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the regulations so that they conform to the relevant provisions of the RTC that were effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made a determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will not have a significant adverse economic impact on business.

### **No Federal Mandate**

The adoption of the proposed amendments to Regulations 1533.2 and 1598 was not mandated by federal statutes or regulations and there is no federal regulation that is identical to Regulation 1533.2 or 1598.